



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,933	05/13/2002	Andrea Heilemann	H 4289 PCT/US	3900
23657	7590	05/04/2006	EXAMINER OH, SIMON J	
COGNIS CORPORATION PATENT DEPARTMENT 300 BROOKSIDE AVENUE AMBLER, PA 19002			ART UNIT 1618	PAPER NUMBER

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/030,933	Applicant(s) HEILEMANN ET AL.	
	Examiner Simon J. Oh	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-48 and 53-78 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-48 and 53-78 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Papers Received

Receipt is acknowledged of the applicant's amendment, response, and petition for extension of time, all received on 23 February 2006.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The rejection of Claims 49-52 under 35 U.S.C. 103(a) over Nishihara is rendered moot with the cancellation of those claims.

The rejection of Claims 38-48 and 53-60 under 35 U.S.C. 103(a) over Nishihara is maintained.

Claims 61-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishihara (U.S. Patent No. 5,990,381).

The Nishihara patent teaches a biomedical material comprising shark-derived collagen and methods of making thereof. The biomedical material is useful for various purposes, including artificial skin, artificial tendon, artificial bone, and surgical sutures (See Abstract). The disclosed materials may comprise additional ingredients, such as hyaluronic acid, chondroitin sulfate, nucleic acids, amino acids, anti-microbial agents, antibiotics, chitin, chitosan, and polyurethane (See Column 6, Line 19 to Column 7, Line 35). In one embodiment,

Art Unit: 1618

a phosphoric solution was added to a collagen solution. An aqueous calcium hydroxide solution was then added to this mixture to obtain an aqueous suspension. The precipitate was then filtered and then freeze-dried (See Example 4).

Although the reference is silent with respect to process viscosities, pH, and concentration of the bio-polymer, it is the position of the examiner that achieving such claim limitations is well within the purview of one of ordinary skill in the art. Along with the claim limitations drawn to physically interlinked fibers, the examiner shifts the burden to the applicant to demonstrate the unexpected result that arises from such limitations that would elevate the instantly claimed invention above the prior art.

Response to Arguments

Applicant's arguments with respect to the pending claims have been considered but are not considered to be persuasive.

The examiner maintains the position that the applicant has not clearly and patentably distinguished the instantly claimed invention from the prior art. The prior art disclosure of the use of polysaccharide polymers such as chitin and chitosan, need not be explicitly recited within an example. The examiner must give the prior art a broad and reasonable interpretation, and as such, teachings of the prior art are not ignored or discounted because they are not specifically exemplified in the prior art. The prior art is relied upon for all that it fairly contains, including non-preferred and alternative embodiments. It is the position of the examiner that one of ordinary skill in the art, giving both the prior art and the claims in their present form their

Art Unit: 1618

broadest reasonable interpretation, would find the claimed invention obvious in view of the prior art. See MPEP § 2111 and 2123.

With respect to the amended Claim 38, it is the position of the examiner that the limitation in step (a) of “adjusting its concentration, as needed” in reference to the presence of a polysaccharide biopolymer still allows for the prior art to be applied against that claim. Despite the recitation of a weight range of 0.1 to 15% of a polysaccharide, the newly recited limitation of adjusting the concentration of that polysaccharide can be reasonably interpreted such that the quantity of polysaccharide can be adjusted to go outside of the initial stated range. Therefore, the prior art will remain applied against this claim as well as Claims 39-48, which depend upon Claim 38.

Newly drafted Claims 61-78 are rejected above in view of Nishihara.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 1618

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Correspondence

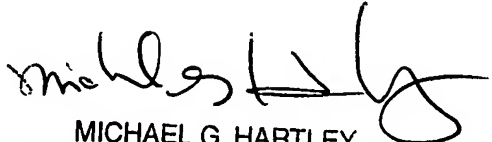
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Simon J. Oh whose telephone number is (571) 272-0599. The examiner can normally be reached on M-F 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Simon J. Oh
Examiner
Art Unit 1618

sj0


MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER